

APPEAL NO. 040031
FILED FEBRUARY 25, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 9, 2003. The hearing officer decided that the respondent (claimant herein) had a compensable injury on _____, and that the claimant had disability from May 5 through September 15, 2003. The appellant (carrier herein) files a request for review in which it contends the hearing officer erred in finding an injury on a date different from the date stated in the disputed issue and that the evidence was contrary to the claimant sustaining an injury on any date. The carrier also argues that since the evidence did not establish a compensable injury, there was no basis for the hearing officer to find disability and that the claimant continued to work after the time he claimed he was injured. There is no response to the carrier's request for review from the claimant in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The stated issue before the hearing officer was whether the claimant sustained a compensable injury on April 16, 2003. The claimant testified that he was injured while breaking up concrete with a jackhammer. The carrier presented evidence that the claimant did not use a jackhammer on April 16, 2003, but that the claimant did use a jackhammer on _____. Based upon this evidence the hearing officer found that the claimant was injured on _____. The carrier argues that by finding the claimant was injured on _____, the hearing officer went beyond the issue before him.

We have observed that the resolution of disputed issues is not governed by the strict rules of pleading as practiced at common law or in the district courts of the State of Texas. See Texas Workers' Compensation Commission Appeal No. 951848, decided December 18, 1995, and cases discussed therein. Thus, some leeway, consistent with express provisions of the 1989 Act and implementing rules, is to be given to the parties to resolve substantive issues as expeditiously as possible provided that due process principles of fundamental fairness are observed in the joining of issues at each stage of the adjudicatory process. We have also stressed that the inclusion of a date of injury is "essential" to resolving the compensability of an injury. Texas Workers' Compensation Commission Appeal No. 94713, decided July 12, 1994. Consistent with these principles, we have not required that the date of injury found by a hearing officer be the same as the date alleged by the claimant when the evidence indicates otherwise. Texas Workers' Compensation Commission Appeal No. 941029, decided September 16, 1994. Nor must a claimant in all cases "pinpoint" a date of injury. See Texas Workers' Compensation Commission Appeal No. 960997, July 10, 1996. Similarly, we

recognize that a hearing officer may decide an issue actually litigated at the CCH, even if it is not among the certified issues in dispute. Texas Workers' Compensation Commission Appeal No. 962596, decided March 27, 1997. Based upon this, we find no error in the hearing officer determining in this case that the date of injury was _____.

The issue of whether or not the claimant sustained an injury is a question of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's finding of injury was sufficiently supported by the evidence in the record.

Disability is also a question of fact. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. There was conflicting evidence regarding disability and it was the province of the hearing officer to resolve these conflicts. We perceive no legal error in the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge